

PRESCRIPTION DRUG DISCOUNTS. STATE-NEGOTIATED REBATES. INITIATIVE STATUTE.

Official Title and Summary

Prepared by the Attorney General

PRESCRIPTION DRUG DISCOUNTS. STATE-NEGOTIATED REBATES. INITIATIVE STATUTE.

- Provides for prescription drug discounts to Californians who qualify based on income-related standards, to be funded through rebates from participating drug manufacturers negotiated by California Department of Health Services.
- Prohibits new Medi-Cal contracts with manufacturers not providing the Medicaid best price to this program, except for drugs without therapeutic equivalent.
- Rebates must be deposited in State Treasury fund, used only to reimburse pharmacies for discounts and to offset costs of administration.
- At least 95% of rebates must go to fund discounts.
- Establishes oversight board.
- Makes prescription drug profiteering, as described, unlawful.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- One-time and ongoing state costs, potentially in the low tens of millions of dollars annually, for administration and outreach activities for a new drug discount program. A significant share of these costs would probably be borne by the state General Fund.
- State costs, potentially in the low tens of millions of dollars, to cover the funding gap between when drug rebates are collected by the state and when the state pays funds to pharmacies for drug discounts provided to consumers. Any such costs not covered through advance rebate payments from drug makers would be borne by the state General Fund.
- Unknown potentially significant net costs or savings as a result of provisions linking state Medi-Cal rebate contracts and the new drug discount program.
- Unknown potentially significant savings for state and county health programs due to the availability of drug discounts.
- Unknown costs and revenues from the provisions regarding lawsuits over profiteering on drug sales.
- Potential unknown effects on state revenues and expenditures from changes in prices and quantities of drugs sold in California.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Prescription Drug Coverage. Currently, several state and federal programs provide prescription drug coverage to eligible individuals. The state's Medi-Cal Program, which is administered by the Department of Health Services (DHS), provides prescription drugs for low-income children and adults. The state's

Managed Risk Medical Insurance Board administers the Healthy Families Program, which provides prescription drugs for children in low-income and moderate-income families who do not qualify for Medi-Cal.

Beginning January 2006, the federal government will provide prescription drug coverage to persons also enrolled in Medicare, a federal health program for elderly and disabled persons. (This would include

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

some persons enrolled in Medi-Cal who are also enrolled in Medicare.) Various other programs funded with state or federal funds also provide assistance to help pay part or all of the cost of drugs for specified individuals.

In addition, many Californians receive coverage for prescription drugs through private insurance that is purchased by individuals or provided by their employer or the employer of a member of their family.

Drug Discounts for Individuals. California, a number of other states, and private associations and drug makers have established drug discount programs. These programs help certain consumers, including individuals who are not eligible for state and federal programs that provide drug coverage, purchase prescription drugs at reduced prices. Current California law, for example, requires retail pharmacies to sell prescription drugs at a discount to elderly and disabled persons enrolled in Medicare as a condition of a pharmacy's participation in the Medi-Cal Program.

Drug Rebates for Medi-Cal. Federal law requires that drug makers provide rebates on their drugs to state Medicaid programs, such as Medi-Cal, so that the net price paid would be lower than that paid by most private purchasers. Also, the state negotiates for additional rebates from drug makers in exchange for giving the drugs made by those companies preferred status in the Medi-Cal Program. Preferred status means that doctors may prescribe a particular drug without receiving advance approval from the state. The rebates received by the state help reduce its costs for drugs for persons enrolled in Medi-Cal.

Linking Medicaid to Other State Programs. Some states have sought to obtain greater discounts from drug makers on prescription drugs for other health programs, including drug discount programs, by linking them to their Medicaid Programs. This approach involves allowing drug makers' products to have preferred status in their Medicaid Program only if the drug maker provides discounts or rebates on drugs for their non-Medicaid Programs. A 2003 U.S. Supreme Court decision has been interpreted to mean that states may do this as long as their

actions would further the goals of Medicaid, such as providing assistance to individuals who might otherwise end up on the Medicaid rolls, and as long as they seek and obtain prior federal approval for their actions.

PROPOSAL

This proposition creates a new state drug discount program to reduce the costs that certain residents of the state would pay for prescription drugs purchased at pharmacies. The major components of the measure are outlined below.

Discount Card Program. Under the new drug discount program, eligible persons could obtain a card that would qualify them for discounts on their drug purchases at pharmacies. The program would be open to California residents in families with an income at or below 400 percent of the federal poverty level—up to about \$38,000 a year for an individual or about \$77,000 for a family of four. Discount cards would also be available to some persons in families with higher incomes with medical expenses at or above 5 percent of their family's income. Persons enrolled in Medicare could obtain discount cards for drugs not covered by Medicare. Persons could not participate in the new drug discount program if they receive their drug coverage from the Medi-Cal or Healthy Families Programs.

The new drug discount program would be administered by DHS, which could contract with a private vendor for assistance. Participants would enroll in the program by paying a \$10 fee, and would pay an annual renewal fee of the same amount. Eligible persons could enroll or reenroll in the program at any pharmacy, doctor's office, or clinic which chose to participate in the drug discount program. Applications and renewals could also be handled through an Internet Web site or through a telephone call center. The DHS would review applications and mail the drug discount cards to eligible persons, usually within four days.

The state would seek two types of discounts in order to obtain lower prices for persons with the new drug discount cards. First, pharmacies that voluntarily chose to participate in the program

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

would agree to sell prescription drugs to cardholders at an agreed-upon discount negotiated in advance with the state. In addition, pharmacies would further discount the price to reflect any rebates the state negotiated with drug makers. (The pharmacies would subsequently be reimbursed for this second type of discount with rebates collected by the state from the drug makers.)

Linkage to Medi-Cal Program. The measure links this new drug discount program to the Medi-Cal Program for the purpose of obtaining reduced prices on drugs purchased with drug discount cards. Specifically, the measure states that DHS may not contract with a drug maker for the Medi-Cal Program if that drug maker does not sell its drugs at a reduced price to the new drug discount program. This includes contracts by which the state obtains rebates on drugs in exchange for giving those drugs preferred status in Medi-Cal. If a drug maker does not agree to such a contract for its drugs, its drugs may be subject to an existing requirement that a doctor receive prior approval from the state before such drugs are prescribed for a Medi-Cal patient. In addition, this measure provides that the names of drug makers and whether they entered into such contracts shall be released to the public.

The measure specifies that these requirements would be implemented consistent with federal law. It further specifies that these provisions would not apply to a drug if there were not another equivalent drug available. Also, the measure provides that a Medi-Cal beneficiary who has already been prescribed a drug would be allowed to continue to receive it without prior approval.

Private Drug Discount Programs. The measure directs DHS to implement agreements with drug discount programs operated by drug makers and other private groups so that the discount cards would automatically provide consumers with access to the best discount available to them for a particular drug purchase.

New State Advisory Board. The measure creates a new nine-member Prescription Drug Advisory Board to review the access that state residents have to prescription drugs as well as the pricing of those drugs, and to provide advice and regular reports on drug pricing issues to state officials.

Outreach Efforts. The measure directs DHS to conduct an outreach program to inform state residents about the new drug discount program. The outreach activities are to be coordinated with the Department of Aging, other state agencies, local agencies, and nonprofit organizations that serve residents who might be eligible for the program.

Assistance to Businesses and Labor Organizations. The measure authorizes DHS to establish a drug discount program to assist certain businesses and labor organizations that purchase health coverage for employees and their dependents. The DHS could help these organizations to reduce their drug costs by arranging for discounts on drug prices with pharmacies and seeking to negotiate rebates on drugs on behalf of employees and their dependents.

Profiteering From Drug Sales. Existing state law does not limit the prices or profits that can be earned on the sale of prescription drugs in California. This measure changes state law to make it a civil violation for drug makers and certain other specified parties to engage in profiteering from the sale of prescription drugs. The definition of profiteering includes demanding “an unconscionable price” for a drug or demanding “prices or terms that lead to any unjust and unreasonable profit.” Profiteering on drugs would be subject to prosecution by the Attorney General or through a lawsuit filed by any person acting in the interests of itself, its members, or the general public. Violators could be penalized in the amount of \$100,000 or triple the amount of damages, whichever was greater, plus legal costs.

Related Provisions in Proposition 78. Proposition 78 on this ballot also establishes a new state drug discount program. The key differences between Proposition 78 and Proposition 79 are shown in Figure 1.

The State Constitution provides that if a particular provision of a proposition that has been approved by the voters is in conflict with a particular provision of another proposition approved by the voters, only the provision in the measure with the higher number of yes votes would take effect. Proposition 78, another measure on the ballot, specifies that its provisions would go into effect in their entirety, and that none of the provisions of a competing measure such as

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 1		
KEY DIFFERENCES BETWEEN PROPOSITIONS 78 AND 79		
	Proposition 78	Proposition 79
General eligibility requirements	<ul style="list-style-type: none"> California residents in families with an income at or below 300 percent of the federal poverty level. (About \$29,000 annually for an individual and \$58,000 for a family of four.) No such provision. 	<ul style="list-style-type: none"> California residents in families with an income at or below 400 percent of the federal poverty level. (About \$38,000 annually for an individual and \$77,000 for a family of four.) Also, persons in families with medical expenses at or above 5 percent of their family's income.
Persons excluded from coverage	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal, Healthy Families, a third-party payer, or a health plan or drug discount program supported with state or federal funds (except Medicare beneficiaries). Certain persons with drug coverage, during the three-month period prior to the month the person applied for a drug discount card. 	<ul style="list-style-type: none"> Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries). No such provision.
Application and renewal fee	<ul style="list-style-type: none"> \$15 per year. 	<ul style="list-style-type: none"> \$10 per year.
Method of obtaining rebates from drug makers	<ul style="list-style-type: none"> Negotiated with drug makers. No such provision. 	<ul style="list-style-type: none"> Negotiated with drug makers. Subject to federal approval, links new drug discount program to Medi-Cal for the purpose of obtaining rebates on drugs.
Assistance to business and labor organizations	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Establishes drug discount program to assist certain business and labor entities.
Prescription Drug Advisory Board	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Creates new nine-member panel to review the access to and pricing of drugs.
Lawsuits over drug profiteering law	<ul style="list-style-type: none"> No such provision. 	<ul style="list-style-type: none"> Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Proposition 79 would take effect, if Proposition 78 received the higher number of yes votes.

FISCAL EFFECTS

This measure could have a number of fiscal effects on state and local government. We discuss several major factors below that could result in costs or savings.

State Costs for Administration and Outreach Activities. The DHS, the Department of Aging, and the newly created Prescription Drug Advisory Board would, in combination, incur significant startup costs, as well as ongoing costs, for administrative and outreach activities to implement the new drug discount program created by this proposition.

This could include administrative costs to:

- Establish the new program, including any new information technology systems that would be needed for its operation.
- Operate the Internet Web site and the call center to receive applications for drug discount cards.
- Process applications and renewals of drug discount cards.
- Negotiate and collect rebates from drug manufacturers and make advance rebate payments to pharmacies.
- Assist business and labor organizations in obtaining drug discounts.
- Coordinate the state's drug discount program with other private drug discount programs.

As noted earlier, this measure links its new drug discount program to Medi-Cal contracts that permit some drugs to be prescribed to Medi-Cal patients without prior approval by the state. To the extent that additional prior approvals of drugs are required for Medi-Cal patients as a result of these provisions, DHS would incur additional administrative costs to process these requests.

The state would also incur additional costs for the proposed outreach activities, potentially including costs for radio or television advertising, written materials, and other promotional efforts to make consumers aware of the drug discount program.

In the aggregate, these administrative and outreach costs—including costs for business and

labor assistance as well as processing additional Medi-Cal requests for prior approval of drug prescriptions—would probably range in the low tens of millions of dollars annually. The exact fiscal effect would depend primarily on the extent of outreach efforts and the number of consumers who chose to participate in the drug discount program.

These state costs could be partly offset by (1) up to a 5 percent share of the rebates collected from drug makers, (2) any private donations received for the support of outreach efforts, and (3) a portion of the enrollment fees collected for the program. Our analysis indicates that the 5 percent share of rebate funding alone is unlikely to offset these state costs. The amount of donations that the state would receive on an ongoing basis for outreach activities is unknown. The amount of fee revenue that would be collected by the state is also unknown. In view of the above, it appears likely that a significant share of the cost of this program would be borne by the state General Fund.

Costs for "Float." This measure requires the state to reimburse pharmacies for part of the amount that they discounted their drugs. This reimbursement reflects discounts for which the state receives rebates from drug makers.

The reimbursement to pharmacies must be made within two weeks after their claims are filed with the state. However, drug makers are required by the measure to pay rebates to the state on at least a quarterly basis. This means that the state could, in many cases, pay out rebates to pharmacies before it actually collects the rebate funds from drug makers. Moreover, any disputes that arise over the actual amounts owed for rebates could further slow payments of rebate funds by drug makers to the state.

This recurring gap in funding between when rebate money is collected by the state and when the state has to pay pharmacies is commonly referred to as float. The cost of the float is unknown, but could amount to the low tens of millions of dollars, depending on the level of participation in the new drug discount program. Float costs would occur mainly in the early years of implementing this new program. After the program has been fully implemented, rebate funds collected from drug

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

makers should be largely sufficient to reimburse pharmacies.

This measure permits the state to enter into agreements with drug makers to collect rebate funds in advance. The amount of funding that the state would receive through such advance payments is unknown. Any float costs that exceeded these advance rebate payments would be borne by the state General Fund.

State Costs or Savings From Linking Drug Discount Programs to Medi-Cal. As noted earlier, this proposition states that DHS may not enter into a Medi-Cal contract with a drug maker that did not agree to provide discounts on the price of their drugs for the new drug discount program. This provision could result in additional costs and savings to the Medi-Cal Program depending upon future actions by the federal government, drug makers, or doctors. For example, this provision could result in the state receiving fewer drug rebates from drug makers for the Medi-Cal Program, thus resulting in costs. On the other hand, this provision could result in savings in cases in which the removal of a drug from preferred status resulted in fewer prescriptions of the drug and its replacement by a less costly medication. The net fiscal effect of this provision on the Medi-Cal Program is unknown but could be significant.

Potential Savings for State and County Health Programs. The drug discount program established under this proposition could reduce costs to the state and counties for health programs.

Absent the discounts available under such a drug discount program, some lower income individuals who lack drug coverage might forego the purchase of their prescribed drugs. Such individuals might eventually require hospitalization as a result of their untreated medical conditions, thereby adding to Medi-Cal Program costs. Other individuals might

“spend down” their financial assets on expensive drug purchases absent such discounts and become eligible for Medi-Cal. The exact amount of savings to the Medi-Cal Program from a drug discount program is unknown, but could be significant if the program enrolled a large number of consumers.

Similarly, the availability of a drug discount program could reduce costs for other state health programs. It could also do so for county indigent care by decreasing out-of-pocket drug expenses for low-income persons who require medications, thereby making them less likely to rely on county hospitals or clinics for assistance. The extent of these potential savings is unknown.

State Costs and Revenues From Provision on Profiteering From Drug Sales. This measure would have an unknown fiscal impact on state support for local trial courts, depending primarily on whether the measure increases the overall level of court workload. The number of civil cases that might result from this measure is unknown. Also, the measure could result in some additional costs for the Attorney General to prosecute profiteering cases. These costs are estimated by the Department of Justice to be less than \$1 million annually. However, these costs could be offset to the extent that the state collected revenues from civil penalties in cases where civil prosecutions were successful.

Other Fiscal Effects. This measure would affect both the prices and quantities of prescription drugs sold in California. In turn, this could affect the taxable profits of drug makers and businesses that provide health care for their employees, as well as consumers’ disposable income. These changes could affect state revenues. Changes in the prices and quantities of drugs sold could affect state expenditures as well. The net impact of these factors on state revenues and expenditures is unknown.

Argument in Favor of Proposition 79

As prescription drug prices soar, more and more Californians are forced to choose between vital medicines and other necessities.

There are two prescription drug measures on the ballot. Prop. 78 is sponsored by drug companies. *Prop. 79 is sponsored by consumer, senior and health organizations, and labor unions.*

The pharmaceutical industry has pledged to spend “whatever it takes” to defeat Prop. 79, launching what could be the most expensive initiative campaign in California history. Manufacturers like GlaxoSmithKline and Merck have each donated nearly \$10 million. Here’s why:

PROP. 79 PROVIDES ENFORCEABLE, NOT “VOLUNTARY,” DISCOUNTS BY DRUG COMPANIES

Prop. 78 is completely voluntary for drug companies: they are free to choose whether or not to offer discounts. But California has tried a voluntary drug discount plan before. The pharmaceutical industry refused to participate so the program dissolved in 2001.

Prop. 79 has an enforcement mechanism.

If a drug company refuses to provide discounts, the state can shift business away from that company and buy from other drug companies that offer discounts.

CALIFORNIA WOULD USE ITS PURCHASING POWER TO GET THE BEST PRICE

Americans pay more for their prescriptions than consumers in many wealthy nations. That’s in part because these other governments negotiate discounts from the drug industry on behalf of their citizens.

California does something similar through Medi-Cal, negotiating discounts of 50 percent and more, saving taxpayers \$5 billion in the last 10 years. Prop. 79 builds on this success, using the same mechanism to negotiate these discounts for eligible Californians. As a result, consumers will pay less out of their own pockets for prescriptions at the expense of the drug companies, not taxpayers.

Under Prop. 79, eligible Californians would get a drug discount

card to present to their pharmacist to receive discounts of up to 50 percent or more.

PROP. 79 OFFERS DISCOUNTS TO 8–10 MILLION CALIFORNIANS

Nearly twice as many Californians will be eligible for discounts under Prop. 79 than under Prop. 78, including:

- Californians with catastrophic medical expenses who spend at least five percent of their income on medical expenses;
- The uninsured who earn up to 400 percent of the Federal Poverty Level (\$64,360 for a family of three);
- Californians on Medicare for drug costs not fully covered by Medicare;
- Seniors, the chronically ill, and others with inadequate drug coverage through private insurers or their employer.

PROP. 79 WOULD SAVE PATIENTS, TAXPAYERS, AND EMPLOYERS MONEY

By making affordable drugs more accessible to more people than Prop. 78, fewer people would fall onto Medi-Cal or other public programs, and need to use taxpayer-funded emergency rooms. Prop. 79 can reduce employers’ health premiums by authorizing a new purchasing pool to reduce drug prices for employer-paid coverage.

PROP. 79: BACKED BY DOZENS OF HEALTH, SENIOR, AND CONSUMER ADVOCACY ORGANIZATIONS

Stand up to the unfair, unaffordable prices of the prescription drug industry. For real, enforceable discounts of up to 50 percent or more on prescription drugs for 8–10 million Californians, **VOTE YES on PROP. 79.**

HENRY L. “HANK” LACAYO, State President
Congress of California Seniors

ELIZABETH M. IMHOLZ, West Coast Office Director
Consumers Union

LUPE ALONZO-DIAZ, Executive Director
Latino Coalition for a Healthy California

Rebuttal to Argument in Favor of Proposition 79

There are good reasons why pharmaceutical companies, health professionals, and patient advocates oppose Proposition 79:

- The measure is so poorly written it will result in years of legal challenges and will never get approval by the federal government.
- It contains the same flaw that caused the failure of a similar program in Maine.
- Proposition 79 would let trial lawyers file thousands of lawsuits claiming that prices are too high or profits are unreasonable. Worse, the measure doesn’t define what is a fair price or profit.

The backers of Proposition 79 rant against the pharmaceutical industry to obscure the real issues. The pharmaceutical industry is just one of many that have spoken out against Prop. 79. Groups representing seniors, physicians, nurses, taxpayers, small businesses, and patients all oppose Proposition 79. Prop. 79 is also opposed by leaders in the fight against heart disease, cancer, epilepsy, asthma, AIDS, lupus, and many other diseases.

Prop. 79 won’t provide drug discounts to more people than Prop. 78 because Prop. 79 won’t ever take effect. Just like a similar measure in Maine that spent years in court and never resulted in a single drug discount, Prop. 79 is a false promise. And if Proposition 79 did ever get implemented, it would establish a big government program costing taxpayers millions to administer and put at risk over \$480 million the state currently receives in drug rebates.

There is only one drug discount program on the ballot that will work and that is Proposition 78. Please don’t be fooled by Prop. 79. It’s the wrong prescription for California.

RODRIGO A. MUNOZ, M.D., Past President
San Diego County Medical Society

JOHN MERCHANT, Chair
California Citizens Against Lawsuit Abuse

CHRIS MATHYS, President
Valley Taxpayers Coalition, Inc.

Argument Against Proposition 79

We all want to provide cheaper prescription drugs to needy Californians, but Proposition 79 just won't work. It's based on a flawed proposal from the state of Maine that never went into effect, never delivered a single discount, and was ultimately abandoned by Maine. Californians don't need another false initiative promise that will result in years of legal challenges and ultimately never go into effect.

"Maine residents were counting on a drug discount program that was just like California's Proposition 79. But it was tied up in court and never received approval from the federal government. Not a single patient got a discounted drug as a result of that failed program."

*Calvin Fuhrmann, MD, FCCP
Kennebunk Medical Center, Maine*

Backed by public employee unions, Proposition 79 sets up another big government program that will cost California millions. With huge budget deficits that already affect funding for critical programs, how can we take on a massive new government program? On top of that, Proposition 79 jeopardizes over \$480 million in rebates that taxpayers currently receive from pharmaceutical companies.

Because Proposition 79 changes the state's Medi-Cal program, which is largely funded with federal dollars, the federal government would have to approve Proposition 79. No federal administration, Democratic or Republican, has ever approved a program like Proposition 79.

Why won't Proposition 79 receive federal approval? Prop. 79 risks the health of poor patients in order to provide drug discounts for people who make as much as \$77,000 annually, including some people who already have health insurance. Proposition 79 says that if a drug manufacturer does not provide steep discounts to these higher income Californians, they can't provide prescription drugs to help the poor, seniors, and disabled patients who depend on Medi-Cal.

"Proposition 79 jeopardizes access to prescription drugs for the lowest income and most vulnerable individuals in this state."

*Neva Hirschhorn, Executive Director
Epilepsy Foundation of Northern California*

A hidden section in Proposition 79 will let trial lawyers file thousands of frivolous lawsuits simply by claiming the price charged for the product is too much or that the manufacturer's profits are too high. The initiative doesn't define what is a fair price or a reasonable profit! Worse, trial lawyers don't need a client to bring these lawsuits and can keep for themselves 100% of the money they are able to force from a defendant!

"Last November, Californians passed Proposition 64 to prevent shakedown lawsuits. Proposition 79 would re-open the door to shakedowns, flood our courts with frivolous litigation, and drive up the cost of prescription drugs."

*John H. Sullivan, President
Civil Justice Association of California*

Like so many previous initiatives, 79 won't deliver what it claims. It will result in years of litigation and will ultimately be rejected by the federal government. It creates an expensive big government program, jeopardizes the health of low income Californians, and will result in a deluge of frivolous litigation benefiting trial lawyers at our expense.

Prop. 79 is the wrong prescription for California. Join seniors, taxpayers, health advocates, patients, and small businesses and VOTE NO on Proposition 79.

TOM MURPHY, Chair
California Arthritis Foundation Council

JOHN KEHOE, Policy Director
California Senior Advocate League

RODNEY HOOD, MD, President
Multicultural Foundation

Rebuttal to Argument Against Proposition 79

If Prop. 79 won't work, why did drug companies contribute more than \$50 million to defeat it?

PROP. 79 IS BASED ON CALIFORNIA EXPERIENCE

Prop. 79 builds on a successful effort that reduces drug costs for California through enforceable discounts.

PROP. 79 SAVES TAXPAYERS MONEY

The discounts are delivered to consumers from drug companies and pharmacies. This not only saves money for consumers, and gets them the care they need, it also saves taxpayers money on health care costs.

PROP. 79 CAN BE IMPLEMENTED IMMEDIATELY

"Thousands of Maine residents have received drug discounts through our program, without the need for federal approval, despite aggressive opposition and litigation by the pharmaceutical companies."

Maine Governor John E. Baldacci, July 2005

PROP. 79 HELPS CALIFORNIANS GET THE DRUGS THEY NEED

Prop. 79 will not put the health of poor Californians at risk. It employs the same, successful mechanism the Medi-Cal drug program has used for the last decade to help provide

California with the best price. Protections are already in place to ensure Medi-Cal patients don't go without the prescriptions they need.

IF ANYBODY USES THE COURTS AGGRESSIVELY, IT'S THE DRUG COMPANIES

The drug companies launched dozens of lawsuits across the country to keep discount efforts like Prop. 79 from becoming law. *They have already sued to block Prop. 79, only to have the case dismissed by a judge.*

Join consumer, senior, and health organizations: VOTE YES on Prop. 79.

Check the facts and research for yourself.

Visit www.VoteYesOnProp79.org.

BETTY PERRY, Public Policy Director
Older Women's League of California

MICHAEL WEINSTEIN, President
AIDS Healthcare Foundation

JACQUELINE JACOBBERGER, President
League of Women Voters of California

TEXT OF PROPOSED LAWS (PROPOSITION 78 CONTINUED)

(b) *Change orders entered into pursuant to this division shall not require a contract amendment.*

130624. *The department may terminate Cal Rx if the department makes any one of the following determinations:*

(a) *That there are insufficient discounts to participants to make Cal Rx viable.*

(b) *That there are an insufficient number of applicants for Cal Rx.*

(c) *That the department is unable to find a responsible third-party vendor to administer Cal Rx.*

130625. *Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this division in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action.*

SEC. 3. GENERAL PROVISIONS

(a) **Conflicting Measures:**

(1) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure or measures relating to the same subject shall appear on the

same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(2) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

(b) **Severability:** The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) **Amendment:** The provisions of this act may be amended by a statute that is passed by a vote of two-thirds of the membership of each house of the Legislature and signed by the Governor. All amendments to this act shall be to further the act and shall be consistent with its purposes.

PROPOSITION 79

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CHEAPER PRESCRIPTION DRUGS FOR CALIFORNIA ACT (CAL RX PLUS)

SECTION 1. Division 112 (commencing with Section 130500) is added to the Health and Safety Code, to read:

DIVISION 112. CHEAPER PRESCRIPTION DRUGS FOR CALIFORNIA ACT (CAL RX PLUS)

CHAPTER 1. GENERAL PROVISIONS

130500. *This division shall be known, and may be cited, as the Cheaper Prescription Drugs for California Program or Cal Rx Plus.*

130501. *The Cheaper Prescription Drugs for California Program, or Cal Rx Plus, is established to reduce prescription drug prices and to improve the quality of health care for residents of the state. The program is administered by the State Department of Health Services to use manufacturer rebates and pharmacy discounts to reduce prescription drug prices for Californians.*

130502. *The people of California find that affordability is critical in providing access to prescription drugs for California residents. This program is enacted by the people to enable the state to take steps to make prescription drugs more affordable for qualified California residents, thereby increasing the overall health of California residents, promoting healthy communities, and protecting the public health and welfare. It is not the intention of the state to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified California residents under this program.*

130503. *Cal Rx Plus shall be available to Californians facing high prescription drug costs to provide lower prescription drug prices. To the extent permitted by federal law, Cal Rx Plus shall also be available to small businesses and other entities, as defined, that provide health coverage for Californians.*

130504. *For purposes of this division, the following definitions apply:*

(a) *“Department” means the State Department of Health Services.*

(b) *“Fund” means the Cal Rx Plus Program Fund.*

(c) *“Program” means the Cheaper Prescription Drugs for California Program or Cal Rx Plus.*

(d) (1) *“Qualified Californian” means a resident of California whose total unreimbursed medical expenses equal 5 percent or more of family income.*

(2) *“Qualified Californian” also means an individual enrolled in Medicare who may participate in this program, to the extent allowed by federal law, for prescription drugs not covered by Medicare.*

(3) *“Qualified Californian” also means a resident of California who has a family income equal to or less than 400 percent of the federal poverty guidelines and who shall not have outpatient prescription drug coverage paid for in whole or in part by the Medi-Cal program or the Healthy Families Program.*

(4) *For purposes of this subdivision, the cost of drugs provided under this division is considered an expense incurred by the family for eligibility determination purposes.*

(e) *“Prescription drug” means any drug that bears the legend “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.*

CHAPTER 2. PRESCRIPTION DRUG DISCOUNTS

130510. (a) *The amount a Cal Rx Plus participant pays for a drug through the program shall be equal to the participating provider’s usual and customary charge or the pharmacy contract rate pursuant to subdivision (c), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.*

(b) *In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug’s manufacturer and the state’s share of the discount.*

(c) *The department may contract with participating pharmacies for a rate other than the pharmacies’ usual and customary rate.*

130511. (a) *The department shall negotiate drug rebate agreements with drug manufacturers to provide for discounts for prescription drugs purchased through Cal Rx Plus.*

(b) *Consistent with federal law, the department shall seek to contract for drug rebates that result in a net price comparable to or lower than the Medicaid best price for drugs covered by the program. The department shall also seek to contract a net price comparable to or lower than the price for prescription drugs provided to the federal government.*

(c) *To obtain the most favorable discounts, the department may limit the number of drugs available through the program.*

(d) *No less than 95 percent of the drug rebates negotiated pursuant to this section shall be used to reduce the cost of drugs purchased by participants in the program.*

(e) (1) *Any pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code may participate in the program.*

(2) *Any drug manufacturer may participate in the program.*

130512. (a) *Subject to this section, the department may not enter into a new contract or extend an existing contract with a drug manufacturer for the Medi-Cal program if the drug manufacturer will not provide Cal Rx Plus a rate comparable to or lower than the Medicaid best price. This provision shall not apply to a drug for which there is no therapeutic equivalent.*

(b) *To the extent permitted by federal law, the department may require prior authorization in the Medi-Cal program for any drug of a manufacturer that fails to agree to a price comparable to or lower than the Medi-Cal best price for prescription drugs purchased under this division.*

TEXT OF PROPOSED LAWS (PROPOSITION 79 CONTINUED)

(c) If a contract with a manufacturer is precluded under subdivision (a) or if prior authorization is required for a drug pursuant to this section, in no event shall a Medi-Cal beneficiary be denied the continued use of a drug that is part of a prescribed therapy until that drug is no longer prescribed for that beneficiary's therapy. The State Department of Health Services shall approve or deny requests for prior authorization necessitated by this section as required by state or federal law.

(d) This section shall be implemented consistent with federal law.

130513. The names of manufacturers that do and do not enter into rebate agreements with the department pursuant to this division shall be public information and shall be released to the public.

130514. (a) Each drug rebate agreement shall do all of the following:

(1) Specify which of the manufacturer's drugs are included in the agreement.

(2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.

(3) Require the manufacturer to make a rebate payment to the department for each drug specified under paragraph (1) dispensed to a participant.

(4) Require the manufacturer to make the rebate payments to the department on at least a quarterly basis.

(5) Require the manufacturer to provide, upon the request of the department, documentation to validate the rebate.

(6) Permit a manufacturer to audit claims for the drugs the manufacturer provides under Cal Rx Plus. Claims information provided to manufacturers shall comply with all federal and state privacy laws that protect a participant's health information.

(b) The department may collect prospective rebates from manufacturers for payment to pharmacies. The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to this section.

(c) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments.

(2) For state rebate payments, manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(d) Interest pursuant to subdivision (c) shall begin accruing 38 calendar days from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

130515. (a) The department shall generate a monthly report that, at a minimum, provides all of the following:

(1) Drug utilization information.

(2) Amounts paid to pharmacies.

(3) Amounts of rebates collected from manufacturers.

(4) A summary of the problems or complaints reported regarding Cal Rx Plus.

(b) Information provided in paragraphs (1), (2), and (3) of subdivision (a) shall be at the national drug code level.

130516. (a) The department shall provide a claims processing system that complies with all of the following requirements:

(1) Charges a price that meets the requirements of this division.

(2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.

(3) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in federal law.

(b) The department shall pay a participating pharmacy the discount provided to participants pursuant to this division by a date that is not later than two weeks after the claim is received.

(c) The department shall develop a mechanism for Cal Rx Plus participants to report problems or complaints regarding Cal Rx Plus.

CHAPTER 3. CAL RX PLUS APPLICATION, ENROLLMENT, AND OUTREACH

130520. (a) The department shall develop an application and reapplication form for the determination of a resident's eligibility for Cal Rx Plus. An applicant, or a guardian or custodian of an applicant, may apply or reapply on behalf of the applicant and the applicant's spouse and children.

(b) The application, at a minimum, shall do all of the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application.

(2) Require that the applicant, or the applicant's guardian or custodian, attest that the information provided in the application is accurate to the best knowledge and belief of the applicant or the applicant's guardian or custodian.

(3) Specify that the application and annual reapplication fee due upon submission of the applicable form is ten dollars (\$10).

(c) In assessing the income requirement for Cal Rx Plus eligibility, the department shall use the income information reported on the application and not require additional documentation.

(d) Application and annual reapplication may be made at any pharmacy, physician office, or clinic participating in Cal Rx Plus, or through a Web site or call center staffed by trained operators approved by the department. A pharmacy, physician office, clinic, or nonprofit community organization completing the application shall keep the application fee as reimbursement for its processing costs. If it is determined that the applicant is already enrolled in Cal Rx Plus, the fee shall be returned to the applicant and the applicant shall be informed of his or her current status as a participant.

(e) The department shall utilize a secure electronic application process that can be used by a pharmacy, physician office, or clinic, by a Web site, by a call center staffed by trained operators, by a nonprofit community organization, or through the third-party vendor to enroll applicants in Cal Rx Plus.

(f) During normal hours, the department shall make a determination of eligibility within four hours of receipt by Cal Rx Plus of a completed application. The department shall mail the participant an identification card no later than four days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department may issue a participant identification number for eligible applicants to the pharmacy for immediate access to Cal Rx Plus.

(h) A Cal Rx Plus participant who has been determined to be eligible shall be enrolled for 12 months or until the participant notifies the department of a desire to end enrollment.

(i) The department shall notify a participant 30 days prior to the termination of enrollment. A Cal Rx Plus participant shall remain enrolled until the participant notifies the department that the participant no longer meets the enrollment criteria.

130521. (a) The department shall conduct an outreach program to inform California residents of their opportunity to participate in the Cheaper Prescription Drugs for California Program. The department shall coordinate outreach activities with the California Department of Aging and other state agencies, local agencies, and nonprofit organizations that serve residents who may qualify for the program. No outreach material shall contain the name or likeness of a drug.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about Cal Rx Plus. The name of the organization sponsoring the material pursuant to this subdivision shall in no way appear on the material but shall be reported to the public and the Legislature as otherwise provided by law.

130522. (a) A drug dispensed pursuant to prescription, including a drug dispensed without charge to the consumer, must be accompanied by Cal Rx Plus participation information in a manner approved by the department and as permitted by law.

(b) The information shall include advice to consult a health care provider or pharmacist about access to drugs at lower prices.

(c) The requirements of this section may be met by the distribution of a separate writing that is approved by or produced and distributed by the department.

CHAPTER 4. PHARMACEUTICAL MANUFACTURER PATIENT ASSISTANCE PROGRAMS

130530. (a) The department shall execute agreements with drug manufacturer and other private patient assistance programs to provide a single point of entry for eligibility determination and claims processing for drugs available through those programs.

(b) The department shall develop a system to provide a participant under this division with the best discounts on prescription drugs that

TEXT OF PROPOSED LAWS (PROPOSITION 79 CONTINUED)

are available to the participant through this program or through a drug manufacturer or other private patient assistance program.

(c) (1) The department may require an applicant to provide additional information to determine the applicant's eligibility for other discount card and patient assistance programs.

(2) The department shall not require an applicant to participate in a drug manufacturer patient assistance program or to disclose information that would determine the applicant's eligibility to participate in a drug manufacturer patient assistance program in order to participate in the program established pursuant to this division.

(d) In order to verify that California residents are being served by drug manufacturer patient assistance programs, the department shall require drug manufacturers to provide the department annually with all of the following information:

(1) The total value of the manufacturer's drugs provided at no or very low cost to California residents during the previous year.

(2) The total number of prescriptions or 30-day supplies of the manufacturer's drugs provided at no or very low cost to California residents during the previous year.

(e) The Cal Rx Plus card issued pursuant to this division shall serve as a single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a health benefit card.

CHAPTER 5. EMPLOYER-PAID HEALTH INSURANCE PRESCRIPTION DRUG DISCOUNTS

130540. The department may establish a prescription drug purchasing program to assist small businesses, small employer purchasing pools, Taft-Hartley trust funds, and other entities that purchase health coverage for employees of those employers and their dependents.

130541. No employer or other entity that purchases coverage for employees and dependents shall be eligible to participate unless the employer pays more than 50 percent of the cost of health coverage for their employees and their dependents.

130542. The department shall seek to obtain, and the department shall seek to contract for, drug rebates that result in a net price comparable to the Cal Rx Plus program.

130543. (a) The amount a participant pays for a drug through the program shall be equal to the participating provider's usual and customary charge or the pharmacy contract rate pursuant to subdivision (c), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.

(b) In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug's manufacturer and the state's share of the discount.

(c) The department may contract with participating pharmacies for a rate other than the pharmacies' usual and customary rate.

130544. The department shall work with employers, the California Chamber of Commerce, and other associations of employers as well as the California Labor Federation AFL-CIO and consumer organizations to develop and implement this chapter.

CHAPTER 6. ADMINISTRATION

130550. The Prescription Drug Advisory Board ("board") is established to review access to and the pricing of prescription drugs for residents of the state, to advise the Secretary on prescription drug pricing, and to provide periodic reports to the commissioner, the Governor, and the Legislature.

(a) No board member shall have a financial interest in pharmaceutical companies, or have worked for pharmaceutical companies or their agents or served within five years before being appointed to the board. No board member shall be employed for a pharmaceutical company for five years after serving on the board.

(b) The board shall consist of nine representatives of the public from the state at large. The Governor, the Senate President pro Tempore, and the Speaker of the Assembly shall each appoint three of these members. Legislative appointees shall serve staggered terms.

(c) (1) Of the three appointees by the Governor, one shall be a person over 65 enrolled in Medicare, one shall be from a school of pharmacy at the University of California, and one shall be an economist.

(2) Of the three appointees by the Speaker of the Assembly, one shall be a consumer or a representative of a recognized organization representing consumers eligible under this division, one shall be a retail pharmacist, and one shall be an employer or a representative of a recognized organization representing employers eligible for a business discount drug purchasing program.

(3) Of the three appointees by the Senate President pro Tempore, one shall be a labor trustee of a Taft-Hartley trust fund, one shall be a physician or nurse with expertise in drug benefits, and one shall be a member of the board of CalPERS.

(d) The term of office of board members shall be as follows:

(1) (A) A member appointed by the Governor shall serve for two years at the pleasure of the Governor, and may be reappointed for succeeding two-year periods, provided that the member may continue to serve beyond the two-year term until the Governor has acted and the appointee is authorized to sit and serve on the board.

(B) A member appointed by the Senate President pro Tempore or the Speaker of the Assembly shall serve for four years, and may be reappointed for succeeding four-year periods, provided that the member may continue to serve beyond the four-year term until his or her appointing authority has acted and the appointee is authorized to sit and serve on the board. If the Senate President pro Tempore or the Speaker of the Assembly has not acted within 60 days after the expiration of a member's term, the position shall become vacant until a person is appointed to a four-year term, calculated from the expiration date of the preceding term.

(2) If a vacancy occurs prior to the expiration of the term for the vacated seat, the appointing authority shall appoint a member for the remainder of the unexpired term pursuant to this chapter.

(3) On the effective date of the act, the Senate President pro Tempore shall appoint three members to serve two-year terms and the Speaker of the Assembly shall each appoint three members to serve four-year terms. All subsequent terms shall be for four years.

(d) Vacancies that occur shall be filled within 30 days after the occurrence of the vacancy, and shall be filled in the same manner in which the vacating member was selected or appointed.

(e) The board members shall select one of their members to serve as chairperson and one of their members to serve as vice chairperson on an annual basis. The chairman shall have the authority to call meetings of the Prescription Drug Advisory Board.

130552. Contracts entered into for purposes of this division are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts with pharmacies and drug manufacturers may be entered into on a bid or nonbid basis.

130553. To implement and administer Cal Rx Plus, the department may contract with a third-party vendor or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary. Drug rebate contracts negotiated by a third-party shall be subject to review by the department. The department may cancel a contract that it finds not in the best interests of the state or Cal Rx Plus participants.

130554. (a) The department shall deposit all payments the department receives pursuant to this division into the Cal Rx Plus Program Fund, which is hereby established in the State Treasury.

(b) The fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to this division and for defraying the costs of administering this division. Notwithstanding any other provision of law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund. The fund shall also contain any interest accrued on moneys in the fund.

130555. (a) The director may adopt regulations as are necessary for the initial implementation of this division. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.

(b) As an alternative to the adoption of regulations pursuant to subdivision (a), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2007. It is the intent that regulations adopted pursuant to subdivision (a) shall be in place on or before July 31, 2007.

CHAPTER 7. ENFORCEMENT

130570. The Attorney General, upon the Attorney General's own initiative or upon petition of the department or of 50 or more residents of the state, shall investigate suspected violations of this division.

130571. The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General related to any such matter under investigation. The summons must be served in the same manner as summonses for witnesses in criminal cases, and all provisions of law related to criminal cases apply to summonses issued under this section so far as they are applicable. All investigations or hearings under this section to which witnesses are summoned or called upon to testify or to produce books, records, or correspondence are public or private at the choice of the person summoned and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition, it must be held in the county in which the petitioners reside.

130572. A court of competent jurisdiction may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony before the Attorney General in the same manner and to the same extent as before the superior court. Any failure to obey such an order may be punishable by that court as a contempt.

130574. If the Attorney General fails to act within 180 days to investigate suspected violations of this division, any person acting for the interests of itself, its members, or the general public may seek to obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of up to one hundred thousand dollars (\$100,000) or three times the amount of the damages, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 1.5. Division 112.5 (commencing with Section 130600) is added to the Health and Safety Code, to read:

DIVISION 112.5. PROFITEERING
IN PRESCRIPTION DRUGS

130600. Profiteering in prescription drugs is unlawful and is subject to the provisions of this section. The provisions of this section apply to manufacturers, distributors, and labelers of prescription drugs. A manufacturer, distributor, or labeler of prescription drugs engages in illegal profiteering if that manufacturer, distributor or labeler:

- (a) Exacts or demands an unconscionable price;
- (b) Exacts or demands prices or terms that lead to any unjust or unreasonable profit;
- (c) Discriminates unreasonably against any person in the sale, exchange, distribution, or handling of prescription drugs dispensed or delivered in the state; or
- (d) Intentionally prevents, limits, lessens, or restricts the sale or distribution of prescription drugs in this state in retaliation for the provisions of this chapter.

130601. Each violation of this division is a civil violation for which the Attorney General or any person acting for the interests of itself, its members, or the general public may obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of one hundred thousand dollars (\$100,000) or three times the amount of the damages, whichever is greater, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 2. (a) This act shall be broadly construed and applied in order to fully promote its underlying purposes. If any provision of this initiative conflicts directly or indirectly with any other provisions of law, or any other statute previously enacted by the Legislature, it is the intent of the voters that such provisions shall be null and void to the extent that they are inconsistent with this initiative and are hereby repealed.

(b) No provision of this act may be amended by the Legislature except to further the purposes of that provision by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature shall be deemed to further the purposes of this act unless it furthers the purpose of the specific provision of this act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

PROPOSITION 80

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Public Utilities Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Section 1. This measure shall be known and may be cited as "The Repeal of Electricity Deregulation and Blackout Prevention Act."

Section 2. (a) The people of the State of California find and declare all of the following:

- (1) A reliable electricity system that delivers power to all consumers at just and reasonable prices is vital to the health, safety, and well-being of all Californians.
- (2) Electricity is a unique good in modern society. It cannot be stored, must be delivered to the entire grid at the same time it is produced, and has no substitutes. Failure of supply for even a few seconds can lead to blackouts and disruption.
- (3) The deregulation of the electricity market in California was a disastrous, ill-conceived experiment that led to rolling blackouts, supply shortages, and market manipulation, resulting in billions of dollars in excessive prices being borne by California ratepayers.

(4) The financial crisis and regulatory uncertainty that were created by the deregulated market have stifled investment in needed power plants.

(5) Deregulation of electricity, including the authorization of direct transactions, creates uncertainty regarding the customer base that must be served, making it impossible to conduct the long-term integrated resource planning that is necessary for an environmentally sound and reliable electricity system, and enables cost-shifting from large customers to small.

(6) Despite the past failures of electricity deregulation, its advocates are once again urging the Legislature and the Public Utilities Commission to launch a further experiment that may inflict additional damage on ratepayers and the California economy.

(b) In enacting this measure, it is the intent of the people to achieve the following policy goals:

- (1) Ensure that all customers receive reliable retail electric service at just and reasonable rates.
- (2) Provide a stable customer base for planning purposes, in order to assure resource adequacy and prevent inappropriate cost shifting. To that end, no new direct transactions shall be permitted, except as provided in this measure.
- (3) Ensure that all rates, terms, and conditions of retail electric service are regulated by the Public Utilities Commission in a non-discriminatory manner as to all suppliers of retail electric service, and that all electricity service providers are under the jurisdiction of the commission.